



## Freemium Services Terms and Conditions

Effective Date: May 1, 2020

These Freemium Services Terms and Conditions (“**Terms**”) are executed between Druva, Inc. (“**Druva**”) and the company, organization, or other legal entity that you represent (“**You**” or “**Your**”). These Terms are effective as of the date You click a box indicating Your acceptance of these Terms or otherwise access or use the Cloud Services (“**Effective Date**”).

Your use of or participation in certain Cloud Services may also be subject to additional policies, rules, and/or conditions (“**Additional Terms**”), which are incorporated herein by reference. You understand and agree that by using or participating in any such Cloud Services, You agree to also comply with these Additional Terms.

BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OF THESE TERMS OR OTHERWISE ACCESSING OR USING THE CLOUD SERVICES, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS; (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THESE TERMS (AND, THAT IF YOU ARE ENTERING INTO TERMS ON BEHALF OF A LEGAL ENTITY, THAT YOU HAVE THE RIGHT, POWER AND AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS); AND (C) ACCEPT THESE TERMS AND AGREE THAT YOU ARE LEGALLY BOUND BY THESE TERMS.

IF YOU DO NOT ACCEPT THESE TERMS, YOU MAY NOT ACCESS OR USE THE CLOUD SERVICES IN ANY MANNER.

ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION AGREEMENT SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND DRUVA WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO A TRIAL BY JURY, OR TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend Your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury.

### 1. **Definitions.**

- (a) “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “**Control**” for purposes of this definition means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- (b) “**Authorized User**” means natural persons who are authorized by You to use the Cloud Services, as applicable, and who actively use the Cloud Services.
- (c) “**Cloud Services**” means Druva’s software-as-a-service solution for managing data availability and information governance, any feature or functionality add-ons, and any

modified versions of, and upgrades, updates and additions to such solution, that is provided to You under these Terms.

- (d) **“Cloud Storage Area”** means the geographic storage area in the United States provided by Druva where Customer Data will be stored.
- (e) **“Confidential Information”** means all confidential or proprietary information disclosed by Druva to You, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure. Confidential Information will not include information that You can demonstrate: (i) is or becomes generally known to the public without breach of any obligation owed to Druva, (ii) was known to You prior to its disclosure by Druva without breach of any obligation owed to Druva, (iii) is received from a third party without breach of any obligation owed to Druva, or (iv) was independently developed by You without use of or reference to Druva’s Confidential Information, as demonstrated by Your contemporaneous written records.
- (f) **“Customer Data”** means Your data, information, and materials that You upload to, store on, or access with the Cloud Services.
- (g) **“Customer Site”** means the geographic location at which Customer Data may be collected.
- (h) **“Documentation”** means the published user guides, manuals, instructions and/or specifications provided or made available to You with respect to the Cloud Services on <https://docs.druva.com/>, as amended from time to time.

## 2. **Cloud Services Overview.**

The Cloud Services are offered to You under these Terms at no cost and are subject to Authorized User and storage limits. You may upgrade Your account at any time by clicking on the “Upgrade” button and providing your phone number for an account representative to contact You.

## 3. **License and Proprietary Rights.**

- (a) **Limited License.** Subject to Your compliance with these Terms, Druva hereby grants You a non-transferable, non-exclusive, non-sublicensable, revocable, limited, and restricted license to (a) access and use the Cloud Services during the Term; and (b) install and use the Cloud Services up to the maximum number of permitted Authorized Users and storage limit found in the Documentation, as may be amended from time to time; provided, in each case, You will only use the Cloud Services for internal business purposes and only in a manner that complies with these Terms, the Documentation, and all applicable laws. You may make copies of the Documentation for Your own internal use in connection with Your use of the Cloud Services in accordance with these Terms, but no more than the amount reasonably necessary.
- (b) **Ownership; Proprietary Rights.** As between You and Druva, Druva shall own all right, title, and interest (and all related moral rights and intellectual property rights) in and to the Documentation and the Cloud Services, and any derivatives and authorized copies made thereof by You, which constitute Druva’s Confidential Information. Except as expressly authorized in these Terms, You do not have any right, title, or interest in the Documentation

and the Cloud Services. All rights not expressly granted in these Terms are reserved by Druva and our Affiliates and our and their licensors.

#### 4. **Third Party Terms.**

- (a) Third-Party Services. Druva may provide tools through the Cloud Services that enable You to export information, including Customer Data, to third-party services. By using one of these tools, You agree that Druva may transfer that information to the applicable third-party service. Third-party services are not under Druva's control, and, to the fullest extent permitted by law, Druva is not responsible for any third-party service's use of Your exported information.
- (b) Third-Party Software. The Cloud Services may include or incorporate third-party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components (“**Third-Party Components**”). Although the Cloud Services are provided to You subject to these Terms, nothing in these Terms prevents, restricts, or is intended to prevent or restrict You from obtaining Third-Party Components under the applicable third-party licenses or to limit your use of Third-Party Components under those third-party licenses.

#### 5. **Privacy**

- (a) Privacy. You authorize Druva to transmit, backup and use Customer Data to provide the Cloud Services to You and Your Affiliates, and otherwise in accordance with these Terms and Druva's Privacy Policy at <https://www.druva.com/privacy-policy/>, and Data Processing Addendum at <https://www.druva.com/msa/>. The Druva Privacy Policy and Data Processing Addendum are incorporated by this reference into, and made a part of, these Terms. You acknowledge and agree that the Cloud Services provided under these Terms are intended solely for customers and use in the United States, and You agree to comply with Druva's Data Processing Addendum and all applicable privacy laws, including those governing Customer Data.
- (b) Data Storage. The Cloud Services will process and store Customer Data in the Cloud Storage Area selected by Druva, which Druva may change in its sole discretion.
- (c) Usage and Configuration Metrics. Druva, our Affiliates, and our third-party service providers that perform services in connection with Druva's provision of the Cloud Services may collect information regarding Your number of users, number of devices, number of servers, per user storage capacity, aggregate storage usage and storage locations (which information shall not include any Customer Data, or any “personal identifiable information” or “protected health information” as such terms are defined in applicable U.S. privacy laws). Druva, our Affiliates, and our third-party service providers may use such information for their internal business purposes, including to perform and to ensure compliance with these Terms, for analytics, and to improve the Cloud Services.

#### 6. **Confidentiality**

You agree to protect Confidential Information using the same degree of care that You use to protect the confidentiality of Your own confidential information of like kind, but not less than reasonable care. You shall not (i) disclose Confidential Information to any third parties other than as expressly provided in these Terms, (ii) use Confidential Information for purposes outside the scope of these

Terms, or (iii) disclose Confidential Information, unless to directors, employees, or consultants who have a need to know such information and are subject to confidentiality obligations that are at least as restrictive as those contained in these Terms.

## 7. Customer Data

- (a) Ownership. As between You and Druva, You retain title to and ownership of all right, title, and interest in the Customer Data.
- (b) Customer Responsibility. To access most features of the Cloud Services, You and Your Authorized Users must register for an account. When You or an Authorized User registers for an account, You and the Authorized User may be required to provide Druva with some information, such as name, email, address, or other contact information. You agree that the information You and Your Authorized Users provide to Druva is accurate and that You will keep it accurate and up-to-date at all times. When You register, You and Your Authorized Users will be asked to activate your account and provide a password. You are solely responsible for (i) maintaining the confidentiality of Your and Your Authorized Users' credentials, passwords, and encryption keys associated with Your accounts, (ii) properly configuring the settings of the Cloud Services and taking Your own steps to maintain appropriate security and protection of passwords and encryption keys and settings for any backup of Customer Data, (iii) all activities that occur with respect to Your accounts regardless of whether the activities are undertaken by You, Your employees, or a third party (including Your contractors or agents), (iv) You and Your Authorized Users' access and use of the Cloud Services and compliance with these Terms and the applicable Documentation (v) all content of Customer Data, and (vi) all product settings, which may override individual end point settings of Authorized Users, if applicable. Druva is not responsible for any alteration, compromise, corruption, or loss of Customer Data that arises from any access to, sharing, or use of accounts, credentials, passwords, or encryption keys by You.
- (c) Limited License. By providing Customer Data to or via the Cloud Services, You grant Druva a worldwide, non-exclusive, royalty-free, fully paid right and license (with the right to sublicense) to host, store, transfer, display, perform, reproduce, and modify for the purpose of formatting for display the Customer Data, in whole or in part, in any media formats and through any media channels now know or hereafter developed.
- (d) Customer Data Representations and Warranties. Druva disclaims any and all liability in connection with Customer Data. You are solely responsible for Your Customer Data and the consequences of providing Customer Data via the Cloud Services. By providing Customer Data via the Cloud Services, You affirm, represent, and warrant that:
  - (i) You are the creator and owner of the Customer Data, or have the necessary licenses, rights, covenants, and permissions to authorize Druva to use Your Customer Data as necessary to exercise the licenses granted by You in this Section, in the manner contemplated by Druva, the Cloud Services, and these Terms;
  - (ii) Your Customer Data, and Your use of the Cloud Services as contemplated by these Terms, does not and will not: (i) infringe, violate, or misappropriate any third party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity or other

property rights of any other person; or (ii) cause Druva to violate any law or regulation, including applicable privacy laws;

- (iii) Your Customer Data does not contain unlawful or objectionable material; and
- (iv) Your Customer Data does not contain software viruses or other harmful or deleterious computer code, files, or programs, such as trojan horses, worms, time bombs, or cancelbots.

## 8. **Feedback**

If You choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Cloud Services (“**Feedback**”), the You hereby grant Druva a royalty-free, fully paid-up, worldwide, transferable, sub-licensable (through multiple tiers), irrevocable, and perpetual license to implement, use, modify, commercially exploit, and/or incorporate into the Cloud Services the Feedback.

## 9. **Restrictions and Requirements**

- (a) Proprietary Notices. You will not (i) remove or modify any trademarks, trade names, service marks, service names, logos or brands, or copyright or other proprietary notices on the Cloud Services or the Documentation and (ii) add any other markings or notices to the Cloud Services or the Documentation.
- (b) Use Obligations. You (i) will access and use the Cloud Services in accordance with these Terms and the applicable Documentation; (ii) will not use or permit the Cloud Services to perform any file storage or other services for any third party; (iii) will not use or permit the use of any software, hardware, application, or process that (A) interferes with the Cloud Services, (B) interferes with or disrupts servers, systems, or networks connected to the Cloud Services, or violates the regulations, policies, or procedures of such servers, systems, or networks, (C) accesses or attempts to access another customer’s accounts, servers, systems, or networks without authorization, (D) harasses or interferes with another customer’s use and enjoyment of the Cloud Services, or (E) in Druva’s sole discretion, inordinately burdens the resources of Druva or our Affiliates that are providing the Cloud Services; and (iv) will not tamper with or breach the security of the Cloud Services.
- (c) Prohibited Activities. You will not (i) modify, port, adapt, translate or create any derivative work based upon the Cloud Services or the Documentation; (ii) reverse engineer, decompile, disassemble, or otherwise derive or attempt to derive the source code of the Cloud Services, except for any non-waivable right to decompile the Cloud Services expressly permitted by applicable mandatory law; (iii) copy, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare, use or offer the Cloud Services on a service bureau basis, deliver or otherwise transfer the Cloud Services, in whole or in part; (iv) access the Cloud Services to create competitive products to Druva or engage in the competitive analysis of the Cloud Services; (v) use the Cloud Services for any illegal purpose or in violation of any local, state, national, or international law; (vi) violation or encourage others to violate, any right of a third party, including by infringing or misappropriating any third party intellectual property right; (vii) perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, accessing any other Cloud Services account without permission; (viii) sell or otherwise transfer the access granted

under these Terms; or (ix) attempt to do any of the acts described in this Section or assist or permit any person in engaging in any of the acts described in this Section.

10. **Disclaimer; No Warranty**

THE CLOUD SERVICES ARE PROVIDED BY DRUVA AND OUR LICENSORS, SUPPLIERS, PARTNERS, PARENT, SUBSIDIARIES, OR AFFILIATED ENTITIES, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, CONSULTANTS, CONTRACTORS, REPRESENTATIVES, AND AGENTS, AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (DRUVA AND ALL SUCH PARTIES TOGETHER, THE “**DRUVA PARTIES**”) ON AN “AS-IS” BASIS. THE DRUVA PARTIES SPECIFICALLY DISCLAIM ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED, VIRUS-FREE, OR ERROR-FREE OR WILL MEET YOUR QUALITY AND PERFORMANCE REQUIREMENTS.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE CLOUD SERVICES OR DRUVA PARTIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE CLOUD SERVICES WILL CREATE ANY WARRANTY REGARDING ANY OF THE DRUVA PARTIES OR THE CLOUD SERVICES THAT IS NOT EXPRESSLY STATED IN THESE TERMS. DRUVA IS NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE CLOUD SERVICES AND YOUR DEALING WITH ANY OTHER CLOUD SERVICES USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE CLOUD SERVICES AT YOUR OWN DISCRETION AND RISK, AND THAT DRUVA IS NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SERVICE) OR ANY LOSS OF DATA, INCLUDING CUSTOMER DATA.

DRUVA DOES NOT DISCLAIM ANY WARRANTY OR OTHER RIGHT THAT DRUVA IS PROHIBITED FROM DISCLAIMING UNDER APPLICABLE LAW.

11. **Indemnification**

To the fullest extent allowed by applicable law, You agree to indemnify and hold the Druva Parties harmless from and against any and all claims, liabilities, damages (actual and consequential), losses, and expenses (including attorneys’ fees) arising from or in any way relating to (a) Your unauthorized use of, or misuse of the Cloud Services and any Customer Data (including any actions taken by a third party using Your account), (b) Your violation of these Terms, (c) Your violation of any third party right, including any intellectual property right or confidentiality, other property, or privacy right, and (d) any dispute or issue between You and any third party. In the event of such a claim, suit, or action (“**Claim**”), we will attempt to provide notice of the Claim to the contact information we have for Your account (provided that failure to deliver such notice shall not eliminate or reduce Your indemnification obligations hereunder). Druva reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by You (without limiting Your indemnification obligations with respect to that matter), and in that case, You agree to cooperate with Druva’s defense of those Claims.

12. **Limitation of Liability**

TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL ANY OF THE DRUVA PARTIES BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, (B) ANY SUBSTITUTE GOODS, SERVICES, OR TECHNOLOGY, (C) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF ONE-HUNDRED (\$100) DOLLARS. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL OR CERTAIN OTHER DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13. **Term**

These Terms continue in effect until the earlier of (i) Your account is deactivated by Druva, including 30 days of inactivity, (ii) the start date of any purchased subscriptions ordered, or (iii) Druva's or Your termination of these Terms in accordance with Section 14(a) below ("**Term**").

14. **Suspension and Termination**

- (a) Suspension and Termination. Upon notice, Druva, in our sole discretion, may suspend or terminate all or part of Your use of the Cloud Services for any reason, including Your suspected or actual breach of these Terms, without limiting any other remedy available to us. You may terminate Your use of the Cloud Services upon notice to Druva.
- (b) Effect of Termination. Druva shall make Customer Data available to You during the Term. Following termination of these Terms, Druva will have no obligation to maintain or provide any Customer Data and may thereafter, and unless legally prohibited, will delete all Customer Data in our systems or otherwise in our possession or under our control. In the event that You want a backup of any Customer Data, we suggest that You run, maintain, and retrieve such backups prior to termination.
- (c) Survival. Upon the termination of these Terms, those provisions that by their nature are intended to survive will continue to apply.

15. **Communication**

Druva may send You emails concerning Druva's products and services, as well as those of third parties. You may opt out of promotional emails by following the unsubscribe instructions in the promotion email itself.

16. **Arbitration Agreement.**

Please read the following ARBITRATION AGREEMENT carefully because it requires You to arbitrate certain disputes and claims with Druva and limits the manner in which You can seek relief from Druva. You and Druva agree that for the purposes of any dispute arising out of or relating to the subject matter of these Terms, Druva's officers, directors, employees, and independent contractors ("**Personnel**") are third-party beneficiaries of these Terms. Upon Your acceptance of these Terms, Personnel will have the right to enforce these Terms against You as the third-party beneficiary hereof.

- (a) Arbitration Rules; Applicability of Arbitration Agreement. The parties shall use their best efforts to settle any dispute, claim, question, or disagreement arising out of or relating to the subject matter of these Terms directly through good-faith negotiations, which shall be a precondition to either party initiating arbitration. If such negotiations do not resolve the dispute, it shall be finally settled by binding arbitration in Santa Clara County, California. The arbitration will proceed in the English language, in accordance with the JAMS Streamlined Arbitration Rules and Procedures (the "**Rules**") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes. The arbitrator shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. All arbitration proceedings between the parties will be confidential unless otherwise agreed by the parties in writing. During the arbitration, the amount of any settlement offer made by You or Druva must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards You an amount higher than the last written settlement amount offered by Druva in settlement of the dispute prior to the award, Druva will pay to You the higher of: (i) the amount awarded by the arbitrator; or (ii) \$10,000. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction.
- (b) Costs of Arbitration. The Rules will govern payment of all arbitration fees. Druva will pay all arbitration fees for claims less than seventy-five thousand (\$75,000) dollars. Druva will not seek our attorneys' fees and costs in arbitration unless the arbitrator determines that Your claim is frivolous.
- (c) Small Claims Court; Infringement. Either You or Druva may assert claims, if they qualify, in small claims court in Santa Clara County, California, or any United States county where You live or work. Notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction, to prevent the actual or threatened infringement, misappropriation, or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights.
- (d) Waiver of Jury Trial. YOU AND DRUVA WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR JURY. You and Druva are instead choosing to have claims and disputes resolved by arbitration. Arbitration procedures are typically more limited, more efficient,



and less costly than rules applicable in court and are subject to very limited review by a court. In any litigation between You and Druva over whether to vacate or enforce an arbitration award, YOU AND DRUVA WAIVE ALL RIGHTS TO A JURY TRIAL, and elect instead to have the dispute be resolved by a judge.

- (e) Waiver of Class or Consolidated Actions. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If, however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither You nor Druva is entitled to arbitration; instead all claims and disputes will be resolved in a court as set forth in (g) below.
- (f) Opt-out. You have the right to opt out of the provisions of this Section by sending written notice of Your decision to opt out to the Druva Inc. address listed below, postmarked within thirty (30) days of first accepting these Terms. You must include (i) Your name and residence address, (ii) the email address and/or telephone number associated with Your account, and (iii) a clear statement that You want to opt out of these Terms' arbitration agreement.
- (g) Exclusive Venue. If You send the opt-out notice in (f), and/or in any circumstances where the foregoing arbitration agreement permits either You or Druva to litigate any dispute arising out of or relating to the subject matter of these Terms in court, then the foregoing arbitration agreement will not apply to either party, and both You and Druva agree that any judicial proceeding (other than small claims actions) will be brought in the state or federal courts located in, respectively, Santa Clara county, California, or the federal district in which that county falls.
- (h) Severability. If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then Section 16 will be null and void. This arbitration agreement will survive the termination of Your relationship with Druva.

**17. Miscellaneous**

- (a) Independent Contractors. You hereby acknowledge and agree that You are not an employee, agent, partner, or joint venture of Druva, and You do not have any authority of any kind to bind Druva in any respect whatsoever. Unless otherwise set forth in the arbitration agreement, You and Druva agree there are no third-party beneficiaries intended under these Terms.
- (b) Governing Law. These Terms are governed by and will be construed under the Federal Arbitration Act, applicable federal law, and the laws of the California, without regard to the conflicts of laws provisions thereof. You expressly agree that the courts located in Santa Clara, California shall have exclusive jurisdiction over any claim or action arising under or in connection with these Terms and/or Your use of the Cloud Services. You further expressly agree to submit to the personal jurisdiction of such courts for the purpose of litigating any such claim or action.

- (c) Export Laws. You shall comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) You represent and warrant that Your entity is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a “terrorist supporting” country, (ii) You will not (and will not permit any third parties to) access or use any Cloud Services in violation of any U.S. export embargo, prohibition or restriction, and (iii) You will not submit to the Cloud Services any information that is controlled under the U.S. International Traffic in Arms Regulations.
- (d) Publicity. You authorize Druva to use Your name, logo, and/or trademark in connection with marketing, sales, financial, public relation, and other materials used for promotional and marketing activities only.
- (e) Entire Agreement; Waiver. You and Druva agree that these Terms are the complete and exclusive statement of the mutual understanding between You and Druva, and that these Terms supersede and cancel all previous written and oral agreements, communications and other understandings relating to the subject matter of these Terms. The failure of either You or us to exercise, in any way, any right herein shall not be deemed a waiver of any further rights hereunder.
- (f) Severability. If any provision of these Terms is found to be unenforceable or invalid, that provision will be limited or eliminated, to the minimum extent necessary, so that these Terms shall otherwise remain in full force and effect and enforceable.
- (g) Subcontract; Assignment. We may subcontract any services to be performed under these Terms without Your consent and without notice. We may transfer, assign, or delegate these Terms and our rights and obligations without Your consent and without notice. You may not assign, delegate, or transfer these Terms or Your rights or obligations hereunder in any way (by operation of law or otherwise), and any such attempt will be void.
- (h) Data Centers. You hereby consent to data center providers to supply hosting services for the Cloud Services.
- (i) No Support. If You require product support, please submit a post through the community forum. Notwithstanding the foregoing, Druva is under no obligation to provide support for the Cloud Services. In instances where Druva may offer support, the support will be subject to published policies.
- (j) Modifications. Druva, in our sole discretion, may modify these Terms (on a going forward basis), the Documentation, and the Cloud Services, including discontinuing all or part of the Cloud Services, from time to time. Druva shall notify You of such changes either directly or through notifications or posts on the Druva website. You shall comply with such changes at the earlier of: (i) thirty (30) days from the date of first notice of such changes and (ii) as specified in the notice of such changes (“**Conformance Period**”). You acknowledge that these changes may adversely impact Your use of the Cloud Services. Druva shall have no liability of any kind to You resulting from such changes. Your continued access to or use of the Cloud Services following the Conformance Period shall constitute binding acceptance of the changes at issue.